IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL CONEY, et al.,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	NO. 03-1324
	:	
NPR, INC.,	:	
	:	
Defendant	:	

MEMORANDUM AND O R D E R

Before the Court are certain Motions in Limine filed by plaintiffs Michael and Theresa Coney. (Doc. Nos. 58, 61, 66, 82). Upon consideration of the papers filed in support and opposition to these motions and after discussion with counsel, the Court enters on this 31st day of August, 2006, the following **ORDER**:

1. Plaintiffs' Motion to Restrict the Testimony of Walter J. Curran (Doc. No. 58) is DENIED IN PART AND GRANTED IN PART.

Curran has been proffered as an expert by the defendant to testify on liability issues. In their motion plaintiffs ask that Curran's testimony be limited to "stevedoring activities," that it should not include credibility judgments and that he be permitted to testify only as a fact witness. Defendant opposes the motion and points out *inter alia* that Judge Hutton had ruled on what was essentially the same motion by his order of November 4, 2004. Plaintiffs assert that they are raising new arguments based at least in part upon decisional law which came down since Judge Hutton's November 4, 2004 Order.

We agree in substantial part that plaintiffs seek a rehash of what it presented to Judge Hutton. The new decisional law referred to by plaintiffs does not persuade us to disturb that Order. Accordingly, the Motion is **DENIED IN PART AND GRANTED IN PART** subject to the following guidance to counsel as to our expected handling of the evidence involved. Curran is qualified to offer an opinion on "stevedoring activities" including matters relating to maintenance and safety. He is not qualified, and will not be permitted to testify as to matters of engineering or metallurgy. Likewise, he will not be permitted to testify specifically about the credibility of prospective or actual witnesses. See Griggs v. BIC Corp., 844 F. Supp 190, 201 (M.D. Pa. 1994) aff'd 37 F.3d 1486 (3d Cir. 1994)). He will however be permitted to testify as to the basis of his opinion(s) which may involve an acceptance or rejection of certain information he is asked to assume or consider in coming to his opinion(s). To the extent that any explanations involve the rejection of certain evidence he will not be restricted either in direct or cross-examination from giving his explanation as to why he may have done so. Finally, we reject plaintiffs' contention that Curran be limited to offering testimony as a fact witness because of some apparent employment relationship with "the stevedoring company involved in this lawsuit." (Pl. Mot., Doc. No. 58 p. 2). This is a matter that goes to weight not admissibility.

2. Plaintiffs' Motion to Preclude Reference to Workers' Compensation (Doc. No. 61) is GRANTED IN PART AND DENIED IN PART.

Plaintiffs seek to preclude any and all defense witnesses from offering testimony about "the compensation proceedings stemming from plaintiff's injury in 1988." Initially, we observe that a specific ruling on this question will be dependent upon the purpose and context of the specific question asked. Generally speaking, we **GRANT** plaintiffs' motion to the extent that defendant seeks to introduce evidence as to some prior adjudication with respect to the circumstances of the 1988 injury or as to the receipt of any workers' compensation benefits.

We accept that it is the general rule that mention of workers' compensation insurance benefits at trial is not permissible. See Murray v. Clark, No. 87-4554, 1998 U.S. Dist. LEXIS 11658, at *3 (E.D. Pa. Oct. 20, 1988). At the same time, the Third Circuit has recognized that testimony of a collateral source may be permitted when offered to directly contradict a statement made by a plaintiff in court. Gladden v. Henderson, 385 F.2d 480, 483-484 (3d Cir. 1967). As the court noted, "The barriers which have been created against the admission of otherwise relevant evidence because of its prejudicial effect do not extend to the affirmative volunteering by a plaintiff of testimony which breaks into this restricted area." Id.

We will not however preclude medical experts offered by plaintiffs from being questioned about the 1988 injury to the extent that it is relevant to this case. We consider that medical experts rendering opinions about Michael Coney's ("Coney") condition resulting from the June 15, 2001 accident may take into account his medical history including injuries

sustained from the 1988 accident. To the extent that properly qualified medical experts do so, and this history is the kind of information reasonably relied upon in the formulation of their opinions, it shall be permitted. This ruling is made without prejudice to either party addressing the issue in a more specific context at trial.

3. Plaintiffs' Motion in Limine to Preclude Certain Medical Witnesses (Doc. No. 66) is **DENIED**.

By this motion, plaintiffs seek to preclude defendant from calling as witnesses Drs. Menachen Meller, Gad Guttman, Guy Fried, Wolfram Rieger and Mario Arena. Plaintiffs assert that these doctors were all examining physicians during the period that Coney was on compensation. We assume, although it is not clearly stated, that plaintiffs refer to compensation from the 2001 accident which is the subject of this litigation. In support of its position, plaintiffs assert that the compensation carrier has refused defense counsel permission to "use" these witnesses. (Pl. Mot., Doc. No. 66, p. 1, ¶ 2). Plaintiffs also assert that it is "hornbook law" that an expert may not be subpoenaed and compelled to testify to matters for which he was retained by a party with adverse interests." (Pl. Mot., Doc. No. 66, p. 1, ¶ 4). Plaintiffs do not identify the "hornbook" they refer to. Nor do Plaintiffs identify any other authority to support this argument. Further, plaintiffs have failed to comply with our Local Rules of Civil Procedure in that they have not provided us with a brief or memo "containing a concise statement of the legal contentions and authorities relied upon in support of the motion." Loc. R. Civ. P. 7.1(c).

Defendant argues that plaintiffs have no standing to challenge these witnesses. We do not however see the need to address the standing question at this time. Certainly, the court has the authority to preclude any party from calling certain witnesses if good and sufficient reason has been set out to support the preclusion. Good and sufficient reason has not been presented here.

4. Plaintiffs' Motion in Limine to Preclude the Testimony of Dr. Lee J. Harris (Doc. No. 82) is DENIED.

Plaintiffs seek to preclude the testimony of Dr. Lee J. Harris, who has been identified as a "neurologist who was retained by the compensation carrier." (Pl. Mot., Doc. No. 82, p. 1). Plaintiffs assert that the "cross-examination of Dr. Harris will inevitably . . . inject [workers'] compensation issues into the trial." (Pl. Mot., Doc. No. 82 p. 1, ¶ 2). Plaintiffs argue essentially that this fact would so limit their ability to cross-examine Dr. Harris that he should be precluded from testifying. We disagree. We do accept however, that the fact that Coney has been examined in the context of a workers' compensation matter may be relevant and is potentially prejudicial.[1] We will and by this Order do direct defendant from questioning Dr. Harris on this specific subject. Whether plaintiffs want to raise it is for them to decide. What we will not allow plaintiffs to do however is inject the issue into the

[1] In their response to this Motion, NPR points out that Dr. Harris reported upon examinations of Coney on January 8 and December 30, 2003 that he (Coney) had fully recovered from the lumbar strain he suffered as a result of the work injury of June 15, 2001. (Def. Opp., Doc. No. 88, P. 1 ¶ 1).

case themselves and then be heard to complain that they have suffered an unfair prejudice as a result.

BY THE COURT:

/s/ David R. Strawbridge
David R. Strawbridge
United States Magistrate Judge

Date: 8/31/06